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DIALOGUE AND DEBATE: SYMPOSIUM ON LAW AND THE PRODUCTION OF PRECARIOUS WORK IN EUROPE

EU law, In-Work Poverty, and vulnerable workers

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Abstract

The focus of the present contribution is the role of European Union (EU) law in shaping the working conditions of four groups of vulnerable workers. It assesses to what extent the impact of EU law favours, on these particular groups, an increased risk of In-Work Poverty (IWP) and explores whether the recent attention to IWP at EU level and the latest initiatives adopted may change the picture in the near future. The purpose is, therefore, to contribute to the debate on the role of EU law and policy in structuring vulnerability from the perspective of IWP. What is commonly known as EU labour law is a fragmentary legal corpus that has grown in a rather patchwork fashion as part of a social dimension of the European project that was, broadly speaking, functional to the logic of market integration. This originates in the early division of competences between the EU and the Member States in the Treaty of Rome, which left labour law and social protection outside the EU sphere of action. It partly explains why the protection of workers, particularly those that do not engage in cross-border situations, does not seem to be the EU's primary goal, or at least it is not formulated as contrary to other potentially clashing rationales such as market integration, flexibility, enhanced competitiveness and so on. The prevention of IWP was not, in any case, one of the concerns of the original European project. Yet, EU law has produced several pieces of legislation that directly or indirectly contribute to shaping the working conditions of European workers, including those more exposed to IWP. The paper assesses the relevant EU legal framework and discusses its impact on the working conditions of those more at risk of IWP. It concludes by estimating the potential of a series of recent initiatives to enhance the protection of the most vulnerable workers, thus making a positive change.

Keywords: EU law; EU labour law; In-work poverty; atypical work

1. Introduction

The present paper focuses on the role of EU law in the regulation of certain clusters of workers across European labour markets who find themselves more exposed to precarity, exploitation, and vulnerability. The marker which will be used for the purposes of our analysis is the concept (*rectius*: the statistical indicator) of In-Work Poverty (IWP). The use of IWP will make it easier to observe the particularly vulnerable position of those workers, allowing to assess the societal impact of the legislative corpus of EU Directives which is typically designated as EU labour law.

Workforce vulnerability attributed to certain clusters of workers identifies a position of particular disadvantage and is related, but not identical, to the idea of precarity.[1] The idea of

[1]For a study of the legal meaning of 'precarious work' at EU and national level see I Florczak and M Otto, 'Precarious Work and Labour Regulation in the EU: Current Reality and Perspectives' in J Kenner, I Florczak and M Otto (eds), *Precarious*

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vulnerability does not identify an autonomous legal concept, although it has been recently employed in some jurisdictions to mark specific situations of economic and social weakness.[2] Neither does it overlap with that of 'most vulnerable workers' commonly used in the field of health and safety at work.[3] Workforce vulnerability is thus a multifaceted concept that partly encompasses contingent work, ie, any form of work falling outside the employment model,[4] and also partly refers to precariousness, which is explicitly mentioned by the EPSR Principle 5 as a common (but not automatic)[5] consequence of the abuse of atypical contracts.[6]

In this paper we intend vulnerability as a feature characterising different groups of persons who are not adequately covered by labour law, social security, and collective bargaining agreements, all of which exposes them to a higher risk of IWP.

The fight against IWP has recently found its way at EU level as one of the aims of the European Pillar of Social Rights (EPSR), which solemnly proclaims that 'In-work poverty shall be prevented' (Principle 6(2), EPSR). This statement – as embedded in principle no. 6 of the Pillar dedicated to 'Fair and adequate wages' and the protection of working and living conditions – clearly marks a change of attitude in EU policy towards IWP, no longer seen as part of the overall goal to reduce poverty in the EU but rather understood as a characteristic problem of contemporary labour markets.[7] The enactment and subsequent implementation of the EPSR potentially departs from, and possibly contradicts, other traditional goals of the EU social dimension, such as flexibility, enhanced competitiveness, or market integration.[8]

The starting assumption of this paper is that EU labour law historically played a role in shaping, at least partially, the working conditions that favour the occurrence and expansion of IWP. This has to do with the early legal architecture and the subsequent development of the EU. It is well known that the original design of the European integration project did not include among its objectives the regulation of labour relations in Europe.[9] The integration of markets, structured around fundamental freedoms, did not envisage regulation or harmonisation of labour laws; the EU legal framework in the field of social policy, instead, primarily aimed at facilitating workers' circulation across Member States. In the same logic, EU citizenship and most EU labour law

Work: The Challenges for Labour Law in Europe (Edward Elgar 2019) 3–7. At international level, some common elements have been identified that allow to draft a broad definition of precarious work, as the work 'performed in the formal and informal economy (. . .) characterized by variable levels and degrees of objective (legal status) and subjective (feeling) characteristics of uncertainty and insecurity (. . .) it is defined by uncertainty as to the duration of employment, multiple possible employers or a disguised or ambiguous employment relationship, a lack of access to social protection and benefits usually associated with employment, low pay, and substantial legal and practical obstacles to joining a trade union and bargaining collectively'. See ILO, From Precarious Work to Decent Work. Outcome Document to the Workers' Symposium on Policies and Regulations to combat Precarious Employment (2012) <https://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@actrav/documents/meetingdocument/wcms_179787.pdf> last accessed 31 August 2022.

[2]See eg, in Spain, Art 5 of Royal Decree Law 11/2020.

[3]See eg, in the United Kingdom (UK), the definition of vulnerable workers as those who are at risk of having their entitlements denied, and who lack the capacity or means to secure them. HSE's list of most vulnerable workers includes new and expectant mothers, migrant workers, disabled workers, gig-economy, agency and temporary workers, older and younger workers, home workers, etc. See TUC, *Hard Work, Hidden Lives. The Full Report of the Commission on Vulnerable Employment* (2008) <http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf> last accessed 31 August 2022.

[4]See A Lo Faro, 'Contingent work: a conceptual framework' in E Ales, O Deinert, and J Kenner (eds), *Core and Contingent Work in the European Union: A Comparative Analysis* (Hart 2017), 9–10.

[5]C Lang, I Schömann, and S Clauwaert, *Atypical Forms of Employment Contracts in Times of Crisis* (ETUI 2013) 5.

[6]EPSR Principle 5: ' . . . Employment relationships that lead to precarious working conditions shall be prevented, including by prohibiting abuse of atypical contracts'. See also European Parliament, Resolution of 4 July 2017 on Working Conditions and Precarious Employment (2016/2221(INI)).

[7]European Commission, *The European Pillar of Social Rights Action Plan* (SWD 2021) 46 final.

[8]An interesting and clear analysis of how EU legislation, policy discourse and CJEU case law are underpinned by market logics and their consequences in S Rainone, 'Labour Rights in the Making of the EU and in the CJEU Case Law: A Case Study on the Transfer of Undertakings Directive' 9 (2018) European Labour Law Journal 299–325.

[9]S Giubboni, 'The Rise and Fall of EU Labour Law' 24 (2018) European Law Journal 7–20.

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directives have been generally perceived to provide effective protection to those who have sufficient economic and educational resources to exercise their right to freely circulate across the EU. Only later developments of EU law brought important changes to the development of labour legislation at EU level and its impact on national labour laws, carving out a space for EU law in shaping the working conditions of European workers.

This paper will challenge the ability of EU law to effectively shield vulnerable workers from IWP, arguing that the patchwork approach typical of EU labour law lacks capacity to deal with such a complex issue. It also sketches a way forward to meet the mandate of Principle 6(2) of the EPSR to prevent IWP, based on the idea that only a holistic approach will adequately fulfil the very aims of the EU as set in its constitutional provisions and thus protect vulnerable workers across the Union.

The paper is organised as follows. Section 2 shows how IWP became a pressing issue at EU level. Section 3 describes the groups of workers under study by mapping those persons considered 'in-work' belonging to specific clusters where IWP is particularly high, and working conditions may lead to precariousness. Section 4 analyses the EU legal framework applicable to each such cluster and challenges EU law's ability to tackle IWP thereof. Section 5 questions whether the most recent and on-going initiatives at EU level may contribute to alleviate the precarity – in the form of IWP – of the investigated clusters. Drawing lessons from the analysis, Section 6 concludes identifying possible ways to effectively combat IWP in the EU.

2. The emergence of In-Work Poverty as a European issue

Statistical data provide us with a European-wide panorama of IWP. According to Eurostat (EU-SILC), IWP stood at an EU average of 9 per cent in 2019, with considerable variations across EU countries, ranging from a minimum of 2.9 per cent in Finland to a maximum of 15.7 per cent in Romania.[10]

The risk of IWP also fluctuates in time, and data show a worrying upwards trend in the EU between 2007 and 2016 (reaching 9.8 per cent that year), before declining until 2019.[11] No statistics for the whole of the EU are available yet to cover the impact of Covid-19 restrictions on the labour markets or the more recent cost-of-living crisis

The fact that the levels of IWP have significantly decreased in some countries (eg, Greece, where IWP is lower in the years following the 2008 financial crisis than in the pre-crisis period), reflects a significant drop in median incomes rather than an improvement in the situation of the working poor.[12] This is an example of the limitations of the way IWP is currently measured and understood at EU level.[13]

While the concept of working poor differs widely across the globe,[14] since the early 2000s the EU adopted a definition of IWP as the proportion of the population earning an equivalised disposable income below 60 per cent of the median income in a specific country.[15] Disposable income corresponds to gross income (from work, capital, etc.) plus social benefits received (public

[10]EU-SILC survey -In-work at-risk-of-poverty rate by age and sex [ilc_iw01] (EU 27).

[11]Ibid.

[12]In this sense, when the poverty threshold is anchored at levels previous to the financial crisis, data are clear in showing that, contrary to the evolution of in-work poverty rates, poverty went up in the countries hit hardest by the crisis. See further *In-Work Poverty in the EU* (Publications Office of the European Union 2017) 5.

[13]Being a relative indicator, the in-work at-risk-of-poverty indicator may fail to make visible all the situations of poverty. In this sense, it is a good idea to combine it with an absolute indicator, such as the severe material deprivation rate (SMD) used by Eurostat. See on this C D'Ambrosio and V Vergnat, 'Measuring In-Work Poverty in the EU: Definitions and Assessment of Social Indicators', paper developed for the Working,Yet Poor project, forthcoming on www.workingyetpoor.eu

[14]B Nolan, W Salverda, D Checchi, I Marx, A McKnight and IG Tóth et al (eds), *Changing Inequalities and Societal Impacts in Rich Countries: Thirty Countries' Experiences* (Oxford University Press 2014).

[15]Eurofound, *In-Work Poverty in the EU* (Publications Office of the European Union 2017).

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pensions, means-tested or non-means-tested benefits) minus direct taxes (social insurance contributions, income tax, property taxes, etc).[16]

The measurement of IWP combines two intertwined dimensions: the individual and the household. This leads to the need to consider differently the changes that may occur at both levels, it being possible that at household level the poverty status changes over time due to variations in the composition and work intensity of the household, even when an individual's employment conditions (wages, work intensity, etc.) remain constant.[17] The data on IWP are referring to a complex reality and the current indicator comes with a number of limitations, that prevent us to establish any straightforward relation between IWP levels and any single and isolated factor, such as, for instance, low wages.

Currently affecting almost one in every ten workers – meaning millions of individuals across the EU – IWP has become a European problem calling for a European coordinated solution. That is probably the reason why beyond numbers and statistics, IWP has also 'emerged' as a topic of concern for EU social policy.

The inclusion of IWP in the EPSR potentially departs from, and possibly contradicts, other traditional goals of the EU social dimension, such as ever-increasing flexibility, enhanced competitiveness or market integration. Poverty sits very uneasily with accepted ideas of how 'work' should look like and how it should be rewarded, and in this sense has a lot of potential to galvanise a reaction against the most precarious forms of employment, typically affecting vulnerable groups of workers.[18]

3. IWP and vulnerable groups (VUPs)

A thorough analysis of the main regulatory challenges posed by the spread of IWP across EU labour markets cannot but focus on those groups of individuals who show the highest risk of falling under the relative poverty line.

In the field of labour law, for instance, the institutional and regulatory framework is a key element determining differences among different groups of workers. In our case, statistics seem to confirm that the uneven distribution of IWP across the labour market is dependent on factors such as the type of contract, the coverage of collective bargaining agreements, the size of employers, and other so-called institutional factors. One of the key findings of a 2019 European Social Policy Network report on IWP is precisely that 'in certain categories of the population the risk of in-work poverty is significantly higher'.[19]

At policy level, the idea that IWP affects with more intensity particular groups of workers is gaining momentum. A 2021 Resolution by the European Parliament confirms that 'a correlation

[16] H Lohmann, 'The Concept and Measurement of In-Work Poverty' in H Lohmann, I Marx (eds), *Handbook on In-Work Poverty* (EE 2018) 7–25.

[17] L Ratti, A Garcia-Muñoz and V Vergnat, 'The Challenge of Defining, Measuring, and Overcoming In-Work Poverty in Europe: An Introduction' in L Ratti (ed), *In-Work Poverty in Europe. Vulnerable and Under-Represented Persons in a Comparative Perspective* (Wolters Kluwer 2022) 7–8.

[18] How work 'should be' can be summarised in the concept of decent work developed by the ILO. It includes, among other aspects 'fair income, security in the workplace and social protection for all'. See <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>. Besides, at international level many charters and documents refer to the idea of just, fair, or adequate wages, referring not only to the individual worker, but also to their families. The background idea seems to be that work must pay for the workers providing them and their families the means to live in dignity. See Art 23.3 of the United Nations (UN) Universal Declaration of Human Rights (UDHR) ('everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection'); Art 7 of the Covenant for Economic, Social, and Cultural Rights of 1966, referring to 'fair wages' and 'decent living'; or Art 4 of the European Social Charter, which recognises the 'right of workers to a remuneration such as will give them and their families a decent standard of living'.

[19] S Spasova et al, *In-Work Poverty in Europe: A Study of National Policies* (Publications Office of the European Union 2019) 10.

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has been found between the rise in non-standard forms of employment and the increased proportion of Europeans at risk of in-work poverty'.[20] The same Resolution assumes that 'some categories of workers (. . .) are at particularly high risk of in-work poverty and social exclusion'; 'workers affected by in-work poverty often work in jobs with unacceptable working conditions, such as working without collective agreement (. . .)' or 'overall, part-timers, and in particular involuntary part-timers, have a higher poverty risk when combining different risk factors, including a low wage, unstable jobs (. . .)'.[21]

While a very diverse set of identifiers could in abstract terms be used to isolate the most vulnerable individuals, mapping them according to their 'working situation' proves to be particularly fruitful and promising. People considered statistically 'in-work' – ie, having worked at least seven months in the reference year – can be grouped according to their status, length of contract, and type of contract. Such partition leads to cluster some people considered 'in-work' and most exposed to the vulnerability consequent to IWP. We assume here that those people are not only 'vulnerable' – in that they are weaker agents in a disadvantaged position in the labour market and in their contractual relationship – but are also not benefitting from the typical institutions representing workers, including trade unions and more broadly social partners: therefore, they are both 'vulnerable' and 'under-represented' subjects in the labour market, hence the acronyms *VUPs* or *VUP Groups* standing for Vulnerable and Under-represented Persons that we use in this paper.

Considering the most vulnerable and under-represented groups of people at work, we can isolate four main clusters. VUP Group 1: low- or un-skilled employees with standard employment relationships employed in poor sectors;[22] VUP Group 2: solo- and dependent self-employed persons and bogus self-employed; VUP Group 3: flexibly employed workers, including fixed-term workers, temporary agency workers and (involuntary) part-timers; VUP Group 4: casual and intermittent workers, and platform workers.

As explained in the introduction, we use the concept of vulnerability in a different sense than precariousness, to refer to those workers that are at higher risk to experience IWP and very often are also in a position of disadvantage in society at large, thus reflecting a relative threshold. The relative threshold draws a line marking what is considered to be acceptable to live in dignity within a particular society. This includes the idea that the material situation of a person enables her to a certain level of material security but also allows effective involvement in the cultural, social and political life of a given society.

The VUP groups identified above correspond to those sections of the labour market that are typically characterised by precariousness, either because their employment status deviates from the standard employment relationship as defined above (VUP groups 2 and 3), or because they have employment contracts which are not sufficiently remunerated to provide resources for a decent life for the workers and their families (VUP group 1) or because their employment arrangements do not correspond altogether to existing legal categories, with the risks normally associated

[20]European Parliament, *Resolution of 10 February 2021 on Reducing Inequalities with a Special Focus on In-Work Poverty* (2019/2188 (INI)).

[21]*Ibid*. Moreover, concerning atypical forms of employment, the same Resolution (Paras AZ and BF) observes that 'whereas a correlation has been found between the rise in non-standard forms of employment and the increased proportions of Europeans at risk of in-work poverty; whereas 16.2 per cent of those working part-time or on temporary contracts are more exposed to the risk of in-work poverty, compared to 6.1 per cent of those on permanent contract'; 'whereas the contraction of employment during the financial crisis in 2008 created a dramatic increase in the number of people in atypical employment, short-term work and part-time employment, including involuntary part-time; whereas part-time workers are most likely to work in basic or lower-level service occupations and sectors and have among the highest in-work poverty risk levels (. . .).

[22]The concept of standard employment relationship refers to an open-ended, full time, and subordinate employment contract. Typically, standard employment relationships confer higher standards of protection for those holding the status of employees, who are fully integrated in the social security systems and typically covered by collective agreements. By contrast, a very heterogeneous group of contractual arrangements that deviate from open-ended, full-time, employment contracts are often labelled as non-standard or atypical contracts in labour law literature. See for a taxonomy M Freedland and N Kountouris, *The Legal Construction of Personal Work Relations* (Oxford Uuniversity Press 2011).

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to informal or under-regulated forms of work (VUP group 4). As is apparent from the outset, the proposed VUP groups do neither identify discrete legal categories *stricto sensu,* nor is their composition exactly the same across EU jurisdictions. Yet, their utility is to flag certain groups of individuals that are more vulnerable as a result of their position in the labour market, among other factors.

The levels of IWP across the four VUPs differ largely, but they all have in common to be higher (sometimes much higher) than the average level of IWP in a given country.[23]

VUP1 (unskilled workers in low-paid sectors) workers' risk of IWP is higher than of the general population of employees. In-work poverty affected 9 per cent of workers in the EU in 2019. Focusing only on employees, the percentage comes to 7.2 per cent, whereas it reaches 7.9 per cent for workers in VUP Group 1 (note that, because of how we defined this group, all persons in VUP Group 1 are employees).

VUP2 workers (solo self-employed) have a much higher risk of in-work poverty than the employed population, reaching a worrying 23.7 per cent. This makes solo self-employed the group of workers at a highest risk of in-work poverty in the EU.

For VUP Group 3, statistics also confirm a higher level of in-work poverty for fixed-term, agency and involuntary part-time workers. In particular, the risk of in-work poverty reached 15.7 per cent for these atypical workers, becoming even higher when two of them are combined (for instance, a fixed-term worker working part-time).

Unfortunately, there is no statistical information on the impact of IWP in VUP Group 4 workers, although it can be presumed that also the members of this group experience higher levels of in-work poverty than the average for the population of employees.

The described clusters help problematising the main research question presented in this paper, which concerns the role of EU law in tackling IWP. Only understanding the ability of EU law to reduce – or amplify – IWP allows to draw conclusions on the regulatory challenges ahead.

4. The role of EU law in shaping each of the four groups of VUPs

Reports and scholarship have extensively scrutinised the main determinants of IWP.[24] Because of its complexity and of the influence of many different factors thereon, IWP cannot be understood without considering a multi-faceted set of causes and contexts. Yet, domestic legal systems still struggle to clearly identify sound policy actions to remedy the widespread of IWP in their labour markets.[25] In trying to elaborate on some policy pointers, this section will consider the legal rules deriving from EU law applicable to the four VUP groups and question their ability to reduce or rather exacerbate existing vulnerabilities.

A. VUP Group 1 – Low- or unskilled employees with standard employment contracts employed in poor sectors

At first sight, the role of EU law in connection to VUP Group 1 is not obvious. If part of the problems that this group experience is linked to low salaries,[26] the role of EU law could be thought

[23]Source: EU-SILC/Eurostat. More detailed information in Ratti, Garcia-Muñoz and Vergnat (n 17).

[24]See, among others, Spasova (n 19) H Lohmann and I Marx (eds), *Handbook on In-Work Poverty* (EE 2018); Eurofound, *In Work-Poverty in the EU* (Publications Office of the European Union 2017).

[25]C Hiessl, 'Working, Yet Poor: A Comparative Appraisal' in L Ratti (ed), *In-Work Poverty in Europe. Vulnerable and Under-Represented Persons in a Comparative Perspective* (Wolters Kluwer 2022) 355–6.

[26]Although research shows that there is no strong correlation between low salaries and in-work poverty. Not all low-wage workers, not even most of them, are poor workers. However, low salaries in combination with other factors do increase the risk of in-work poverty. On this see W Salverda, 'Low Earnings and Their Drivers in Relation to In-Work Poverty' in H Lohmann and I Marx (eds), *Handbook on In-Work Poverty* (Edward Elgar 2018) 26–49.

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to be minimal, since according to Article 153(5) TFEU, salaries and their determination are firmly anchored on the national level, being competence of the Member States, which may involve the social partners. Existing CJEU case law on wages covers mostly the right to equal pay, which appears in primary law (eg, Article 157 TFEU) as well as in several EU Directives, including the 'atypical work' Directives.

However, this would be a rather formalistic and misleading conclusion. Not only the determination of salary levels has been more or less directly influenced by EU soft law (especially within the European Semester)[27] and, with particular intensity through the Memoranda of Understanding (MoU) signed with several EU countries in the aftermath of the 2008 crisis. Besides, there is an important corpus of soft law and other legal sources dealing with wages and 'pay'[28] that has become more relevant since the adoption of the EPSR, which may well be very soon received in a hard law instrument: a Directive on adequate minimum wages (discussed in Section 5 below).

Another aspect to consider is that an economic context of fierce competition influences the strategic choices and behaviour of companies, that may be tempted to engage in outsourcing, subcontracting, and similar practices to reduce costs and enhance their competitiveness, with a negative impact on working conditions of workers in VUP Group 1. In this sense deregulation, as experienced across the EU in sectors such as road transport, postal services, or air transport 'can result in a market in which employers strive to cut costs and exploit legal loopholes in order to maintain or increase market share. This can have a negative impact on the job quality and overall working conditions of workers.'[29]

The context of heightened competition also had an impact on collective bargaining. Changes at national level, many times indirectly induced by the EU financial institutions in the aftermath of the financial crisis of 2008,[30] increased the flexibility of collective bargaining systems, weakening their capacity to protect workers, particularly at the sectoral level. Examples of such changes include limitations of *erga omnes* extensions, opt-out, and derogation clauses, expiration of collective agreements coming to the end of the conventional duration, priority of company over sectoral agreements,[31] and the introduction (or and increased use) of opening clauses.[32] The mentioned changes on collective bargaining systems led to a weakening of its protective function, particularly at the lower end of the labour market, thus negatively impacting the working conditions of VUP Group 1 workers.

Therefore, despite their limited role in shaping the working conditions of workers in VUP 1, when analysed from a broader perspective, EU law and policy have shaped, either directly or indirectly, the working conditions of low-wage and low-skilled workers, which has probably favoured an increase of IWP.

Against this background, the answer of EU law remains somehow limited. There is not (yet) any EU legislation on salaries with the potential to protect workers from poverty.

[27]E Menegatti, 'Challenging the EU Downward Pressure on National Wage Policy' 32 (2016) International Journal of Comparative Labour Law 195–219.

[28]This includes the Community Charter of the Fundamental Social Rights of Workers 1989, the European Commission's Opinion on an Equitable Wage, the European Social Charter (ESC), and the conventions of the International Labour Organization (ILO).

[29]European Parliament, *Precarious Employment in Europe. Part 1: Patterns, Trends and Policy Strategies* (Publications Office of the European Union 2016) 29.

[30]S Clauwaert and I Schömann, 'The Crisis and National Labour Law Reforms: A Mapping Exercise' (ETUI 2012); G Van Gyes and T Schulten (eds), *Wage Bargaining Under the New European Economic Governance* (ETUI 2015).

[31]V Glassner, M Keune, and P Marginson, 'Collective Bargaining in a Time of Crisis: Developments in the Private Sector in Europe' 17 (2011) Transfer 303–21.

[32]Eurofound, 'Working Conditions in the Retail Sector' (2013); J Basedow et al (eds) *Employee Participation and Collective Bargaining in Europe and China* (Mohr Siebeck 2016).

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Albeit indirectly, a relevant source on VUP Group 1 workers derives from EU law on restructuring of companies, which is made of legal instruments such as the Directives on transfer of undertakings,[33] collective redundancies,[34] and employer insolvency.[35] For reasons of space, we will not analyse in detail these instruments, but it suffices here to highlight that, particularly the first two mentioned Directives, are not only concerned with the mitigation of the social effects of restructuring, but also with easing restructuring processes to make companies more competitive and efficient,[36] and therefore they do not provide an answer, even a partial one, to those that remain in employment with deteriorated working conditions.[37]

There are no legal answers to the social negative consequences of privatisations and ensuing deregulations, which may result in 'downward' pressures in the lower end of the labour markets.[38]

B. VUP Group 2 – Economically dependent solo self-employed

VUP Group 2 focuses on another group of workers experiencing high levels of IWP: economically dependent solo self-employed. EU law impact on this group comes in two different forms: first, in a number of circumstances, the CJEU had to deal with the boundaries between employees and self-employed, thus contributing to define which situations and workers are covered by labour law protections, which may offer some shelter against the risk of IWP, but at the same time leave others outside their protective umbrella. Secondly, the CJEU defined when domestic legislation may allow the self-employed to organise and bargain collectively.

On the first point, only few hints can be found in the Court's case law, since the CJEU has not directly elaborated a concept of self-employed person. In defining what is and what is not a self-employed the Court deploys well-known legal concepts such as subordination, responsibility and remuneration.[39] In *Yodel*, the Court clarified that the distinctive features of a self-employed worker are that they afford discretion: (a) to use subcontractors or substitutes to perform the service which they have undertaken to provide; (b) to accept or not accept the various tasks offered by their putative employer, or unilaterally set the maximum number of those tasks; (c) to provide their services to any third party, including direct competitors of the putative employer; (d) to fix their own hours of 'work' within certain parameters and to tailor their time to suit their personal convenience rather than solely the interests of the putative employer, 'provided that, first, the independence of that person does not appear to be fictitious and, second, it is not possible to establish the existence of a relationship of subordination between that person and his putative employer'.[40] In its case law on equality, the CJEU held that the classification of a person under national law as self-employed cannot prevent the application of Article 157 TFEU (equal pay between men and women) when the alleged independence of the person does not correspond to the material reality.[41] Further developing this finding, the concept of worker in EU law demarcates in the negative that of self-employed, which has allowed the Court to disregard national laws

[33]Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L82/16.

[34]Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, OJ L225/16.

[35]Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer, OJ L283/36.

[36]C Barnard, *EC Employment Law*, 3rd Revised edition (Oxford University Press 2006) 619; Rainone (n 8).

[37]N Countouris and W Njoya, '2001/23/EC Transfer of Undertakings' in M Schlachter (ed), *EU Labour Law. A Commentary* (Wolters Kluwer 2015) 423 and 438.

[38]An analysis on the causes of 'downward' pressures in the labour market in D Weil, *The Fissured Workplace: How Work Became So Bad for So Many and What Can Be Done to Improve It* (Harvard University Press 2014).

[39]Case C-268/99 *Jany and Others* EU:C:2001:616.

[40]Case C-692/19 *B v Yodel Delivery Network Ltd* EU:C:2020:288, para 45.

[41]Case C-256/01 *Allonby* EU:C:2004:18, para 72.

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classifying a person as self-employed if that person may be considered a 'worker' under EU law.[42] However, and although the principle of equal treatment applies to the self-employed, EU law does rarely offer adequate protection to 'real' self-employed persons,[43] nor does it consider 'economically dependent' self-employed as a legal category in need of protection.

On the second problem, ie, the application of competition law to collective labour agreements involving self-employed persons, the CJEU found in its case *FNV Kunsten* that an organisation of self-employed workers cannot be considered as a trade union, and therefore an agreement involving such an organisation falls under Article 101(1) TFUE. As a consequence, the exception to the application of Article 101(1) TFEU to collective agreements as established in *Albany*[44] must be strictly interpreted as only covering labour agreements signed by trade unions representing workers.[45] The adoption of Guidelines on the application of EU competition law to collective agreements affecting the working conditions of solo self-employed persons may change the rules of the game, which will be discussed below in Section 5.

C. VUP Group 3 – Atypical workers

VUP Group 3 assembles together three different types of atypical workers, namely fixed-term workers, involuntary part-time workers, and temporary agency workers. For this group, EU law plays a central role, since the rules on these employment arrangements are harmonised at EU level.

In this subsection we will not engage in a detailed analysis of the Directives on atypical work. We will rather focus on how much these Directives adequately protect atypical workers from IWP, which may be better understood in the light of their rationale. The three Directives on atypical work have in common that they are designed to promote flexible employment relationships, while only limiting their abuse.[46] Therefore, EU law does not a priori see these forms of work as problematic. Regrettably, statistical evidence shows a different picture, in that all such forms – and particularly their combination – result in being multipliers of IWP.

On part-time work, two aspects deserve attention: the issue of low work intensity and the shortcomings of the application of the equal treatment principle. As a result of the principle '*pro rata temporis*', part-time work structurally leads to low levels of work intensity, which typically may exacerbate the risk for individuals (particularly single earners) and for their households to fall below the IWP threshold. The fact that an important percentage of part-time workers in the EU are in that situation involuntarily worsens the problem. However, the part-time work Directive[47] does not contemplate any modulation of the principle of *pro rata temporis,* neither does it establish any subjective provision for part-time workers aimed to increase their work intensity, nor to convert their contracts into full-time.[48] Although Clause 1(b) expresses the aim to 'facilitate the development of part-time work on a voluntary basis', it fails to provide effective tools

[42]Case C-413/13 *FNV Kunsten* EU:C:2014:2411, para 32; Case C-22/98 *BECU* EU:C:1999:419, para 26.

[43]See Directive 2010/41 on the principle of equal treatment between men and women engaged in an activity in a self-employment capacity.

[44]Case C-67/96 *Albany* EU:C:1999:430.

[45]Case C-413/13 *FNV Kunsten* EU:C:2014:2411.

[46]The Court of Justice of the European Union (CJEU) held that the first purpose of the Agreement on part-time work is to 'promote part-time work' although is true that it added that this would be done 'by improving the quality of such work'. Case C-395/08 and 396/08 *Bruno and others* EU:C:2010:329, paras 77–80. On the rationales of the atypical work directives see D McCann, *Regulating Flexible Work* (Oxford University Press 2008).

[47]Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC. OJ L14/9.

[48]In the formulation of Clause 5 of the Framework Agreement annexed to the Directive, 'employers should give considerations to requests by workers to transfer from part-time to full-time work or to increase their working time should the opportunity arise', which does not establish any right for the employee to do so. Priority is given, then, to the organisational needs of the employer.

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to distinguish between voluntary or involuntary part-time work. Hence, from an IWP point of view, the structural problem of (involuntary) low work intensity remains unaddressed.

The part-time work Directive also seeks to improve the quality of work by enshrining the principle of equal treatment between part-time and full-time workers, which prohibits any kind of discrimination with regards to employment conditions unless it can be objectively justified.[49] But even this 'strong' principle of equal treatment does not come without limitations. The need to identify a comparable full-time worker to establish discrimination may be problematic in some sectors, particularly in light of the widespread increase of flexible working arrangements.

EU law regulates fixed-term work in Directive 1999/70/CE.[50] From an IWP perspective, fixed-term work is problematic due to (real or perceived) job insecurity, which directly and indirectly results in a more vulnerable position of individuals in the labour market. Directive 1999/70 seeks to improve the quality of fixed-term work and prevent abuse, combining equal treatment and anti-abusive provisions. The goal is to defend a proper use of fixed-term work and avoid discrimination of fixed-term workers. Clause 4 of the Agreement annexed to the Directive prohibits discrimination with regards to employment conditions, unless a different treatment can be objectively justified. The CJEU has admitted in its latest case law a number of justifications for the different treatment of fixed-term workers, particularly in the public sector.[51] Similarly to what happened with part-time work, different treatment is established by comparison with a standard worker, which for the same reasons described before may lead to the impossibility to compare different categories of temporary workers.[52] The anti-abusive provisions as per Clause 5 of the Directive consist on the limitation of successive fixed-term contracts, translating into an obligation for the Member States to establish either objective reasons justifying the renewal of such contracts or relationships, or a maximum total duration of successive fixed-term employment contracts or relationships, or a maximum number of renewals.

Besides the limitations to the principle of equality, the Directive fails to address some structural problems of fixed-term work, such as the circumvention of dismissal regulations, the short length of many fixed term contracts, and the difficulties that fixed-term workers find to organise collectively. These problems contribute to the vulnerable position of fixed-term workers and may partly explain the high impact of IWP on this group.

On its part, Directive 2008/104[53] regulates temporary agency work. similar to the previous ones, the Directive includes an antidiscrimination clause, although its scope is more limited, since it only applies to 'essential working and employment conditions'.[54] On the other hand, the requirement of a comparator is less demanding, as the hypothetical comparator is admitted.[55] Furthermore, Articles 5(2), 5(3) and 5(4) of the Directive allow for several derogations to the principle of equal treatment, subject to the agreement of the social partners. An important aspect of the Directive is that it conduced to normalise the activities of temporary work agencies in Europe, thus contributing to the expansion of this atypical employment arrangement. The Directive includes in its Article 4 a requirement on the EU Member States to

[49]Clause 4 of the Framework Agreement annexed to the Directive.

[50]Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP. OJ L175/43.

[51]Cases C-677/17 *Montero Mateos* para 63; Case C-574/16 *Grupo Norte Facility* para 56–60; Case C-619/17 *de Diego Porras II* para 70-75 and Case C-466/17 *Motter* EU: C:2018:758, paras 31–35.

[52]Case C-245/17 *Viejobueno Ibáñez* EU:C:2018:934, para 45.

[53]Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work. OJ L 327/9.

[54]Art 5(1) Directive 2008/104/EC.

[55]M Schlachter, 'Transnational Temporary Agency Work: How Much Equality Does the Equal treatment Principle Provide?' (2012) International Journal of Comparative Labour Law and Industrial Relations, vol 28, issue 2, 190; N Countouris and R Horton, 'The Temporary Agency Work Directive: Another Broken Promise?' 38 (2009) Industrial Law, vol 38, issue 3, Journal 333–338.

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'review any restrictions or prohibitions on the use of temporary agency work', unless they can be justified, although according to the CJEU this provision does not impose an obligation on the national courts to disapply a rule that contains prohibitions or restrictions on the use of temporary agency work that are not justified on grounds of general interest.[56] Finally, Article 5 (5) of the Directive has been described as an anti-abuse provision, but it provides no guidance on how to fight abuse in practice. The CJEU on its part, failed to give more clear-cut instructions to the referring judge, apart from the need to ensure the temporariness of the use of agency workers by the user undertaking.[57]

D. VUP Group 4 – Casual, intermittent and platform work

VUP Group 4 constitutes a highly heterogeneous cluster which, furthermore, partially overlaps with VUP Group 2. Despite the lack of specific EU law instruments addressing this cluster, most of the EU *acquis* could be potentially applied to them if... they were found to be 'workers'. Therefore, here we are confronted with a problem of classification and miss-classification, aggravated by the fact that the relevant concept of 'worker' may be discretionally carved at national level (as in the case of atypical work Directives). The potential of EU law to protect these workers by including them in the broad concept of 'worker' as developed on the basis of Article 45 TFEU and increasingly refined by the CJEU in its subsequent case law,[58] could be hampered by the nature of the activities carried out by casual and intermittent workers, often consisting of micro-tasks susceptible to be considered as marginal and therefore excluded from the concept of 'worker'.[59] Other pieces of EU law defining their personal scope of application in a broader way may be more likely applicable to casual and platform workers. This may well be the case with the 2019 Directives on Transparent and predictable working conditions[60] and on Work-life balance,[61] that formulate an innovative personal scope of application declaring themselves applicable to 'every worker in the Union who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State with consideration to the case-law of the Court of Justice'.[62]

It goes without saying that the 'demand' for the use of casual and intermittent contractual arrangements is to be found in the strategies deployed by employers to adapt to an increased competitive environment at the lower end of the labour market described above in Subsection 3.2 and the consequent need to reduce costs. Technological change, more than a driver, is an enabling tool, particularly in the case of platform work.

5. Recent initiatives in the field of EU social policy

The previous Sections have shown that, in an economic scenario of enhanced competitiveness, a demand for flexible and atypical contractual arrangements that offer companies potential economic advantages has been to some extent facilitated by EU law, seeking to promote the

[56]CJEU, Case C-533/13 *AKT* EU:C:2015:173, para 32.

[57]CJEU, Case C-232/20 *Daimler* EU:C:2022:196; CJEU, Case C-681/18 *KG* EU:C:2021:823; CJEU, Case C-331/17 *Sciotto* EU:C:2018:859.

[58]See eg N Kountouris, '"The Concept of 'Worker" in European Labour Law: Fragmentation, Autonomy and Scope' (2018) Industrial Law Journal, vol 47, issue 2, 192–225.

[59]Case C-413/01 *Ninni-Orasche* EU:C:2003:600, para 32.

[60]Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union OJ L 186/105.

[61]Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU OJ L 188/79.

[62]Art 1.2 of Directive (EU) 2019/1152 and Art 2 of Directive (EU) 2019/1158.

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aforementioned market integration, while at the same time trying to prevent abuses and the worst social effects of flexibility.

However, EU law's protective rationale in the social field encounters many obstacles. Some of them, particularly those related to IWP, such as the limited operability of the principle of equal treatment, have been highlighted for all workers clustered under the four VUP Groups.

In this section, within the limits of a quick scrutiny, the focus is on some recent regulatory initiatives that in our opinion deserve attention, in that they may contribute to reduce the current levels of IWP in Europe. Their full realisation constitutes one of the most important challenges for the EU legislator in the field of social policy and marks an opportunity to test to what extent the aims expressed in the EPSR may make a difference in the future evolution of the social dimension of the EU.

The first initiative to materialise in 2019 was a Council Recommendation on access to social protection for workers and the self-employed.[63] Back in 2018, the Commission wished to broaden the scope of social security entitlements to cover people working under a status different from that of a typical (ie, standard) subordinate employee. Based on Articles 153(1)(c), Articles 151 and 352 TFEU, a Directive was meant to be proposed,[64] with the aim to (a) ensuring similar social protection rights for similar work; (b) tying social protection rights to individuals and making them transferable; (c) making social protection rights and related information transparent; and (d) simplifying administrative requirements.[65] The road towards a directive was suddenly interrupted by the Council and led the Commission to water down its original instrument and transform it into a Council Recommendation. While aiming at reaching the same goals, the current text is far less ambitious. On the one hand, its weakened legal value as Recommendation led Member States so far to react very timidly.[66] And when reacting, they were mostly driven by the urgency of the Covid-19 pandemic restrictions (eg, by introducing short-term type of benefits to the self-employed) more than by a sound policy to deliberately increase social protection outside the scope of ordinary employees.[67] On the other hand, the same material scope of the Recommendation did not lead to a significant shift in the direction to rebuild social protection with different tools and according to a renewed logic, with the consequence of leaving the most vulnerable work relationships (especially those performed through online platforms) 'trapped' in precarity.[68]

The other three initiatives are, to a great extent, the result of a policy commitment to develop the full potential of the EPSR through its implementation in the form of concrete regulations conducive to the achievement of its goals. Against this background, the Commission launched, on 4 March 2021, an Action Plan to implement the EPSR.[69] Among the challenges addressed by the Action Plan to make work standards fit for the future or work, the first to appear, in line with Principle 6(2) EPSR, is the need to tackle IWP and inequality.

As presented by the early Von der Leyen Commission, an initiative was launched with the aim to granting adequate minimum wages to all workers across the EU. Not surprisingly, there has been an important debate on whether such an initiative respected the principles of conferral (given the exclusion of 'pay' in Article 153.5 TFUE) and subsidiarity. However, the Directive has been carefully drafted to respect both principles, since it does not establish any straightforward

[63]Council Recommendation of 8 November 2019 OJ C387/1.

[64]European Commission, *Access to Social Protection for All Forms of Employment: Assessing the Options for a Possible EU Initiative* (Brussels 2018).

[65]COM (2017) 2610 final.

[66]Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C; 387/01).

[67]D Mangan, E Gramano, and M Kullmann, 'An Unprecedented Social Solidarity Stress Test' (2020) European Labour Law Journal, vol 11, issue 3 247–275.

[68]A Aranguiz and B Bednarowitz, 'Adapt or Perish: Recent Developments on Social Protection in the EU under a Gig Deal of Pressure' 9 (2018) European Labour Law Journal 345.

[69]EPSR Action plan (2021).

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obligation on Member States to introduce a mínimum salary, nor does it preclude the option to establish minimum salaries through collective bargaining under certain conditions. This careful drafting comes with the risk of rendering the Directive less effective to fight IWP at EU level, but seems necesary to diminish the risk to be challenged at the CJEU. While the initial draft tabled by the Commission in October 2020[70] was focused on two main pillars, namely the coverage of collective bargaining agreements on minimum wages and the establishment of transparent and efficient procedures to ensure adequacy of statutory minimum wages, the subsequent text voted in November 2021 by the plenary of the European Parliament[71] raised the expectations, by clarifying the importance of effectively promoting free collective bargaining on wage setting (amended Article 4) and enforcing the right to a decent standard of living (amended Article 5(2)). This remarkably led to a final text approved by the *Trilogue* in June 2022,[72] where the fight against IWP is directly addressed by the adoption of an absolute measurement of adequacy, referred to a national basket of goods and services at real prices (Article 5(2)(a)), and by making express reference to the two main IWP thresholds, referred to 60 per cent of the gross median wage and 50 per cent of the gross average wage (Article 5(3)). Recently approved by the Council on 4th October 2022, the Directive awaits publication in the Official Journal of the EU at the moment of writing. While the ability of minimum wage increases to serve as a sword to fight IWP alone remains questionable and seems to be contradicted by empirical evidence,[73] an adequate wage floor constitutes an indispensable shield to shelter salaried labour from poverty, comparable to the function played by minimum income protection schemes for the jobless.[74]

A third legislative initiative only tangentially impacts the levels of IWP across Europe. The draft directive proposed by the Commission in December 2021 on the working conditions of platform workers[75] addresses many of the challenges that the regulation of platform work has raised in most jurisdictions, in the EU and beyond. Amongst such challenges, what has been above defined as the VUP Group 4 (casual and platform workers) experience particularly high levels of IWP. The main reason why this occurs is that per definition casual and platform workers do not benefit from a stable income, since discrete assignments are distributed unpredictably by platforms and/or clients. This aspect bears immediate consequences on the so-called 'work intensity' of individuals, with the effect of exposing their households to a much higher risk of IWP than other VUPs. While the proposed directive aptly tackles the issue of work status of platform workers (Chapter II) and that of algorithmic management at work (Chapter III), it fails to directly address the question of platform workers' remuneration and income protection. As emerged from the above analysis (Sections 3 and 4), being a worker included in VUP 1 – ie, working on the basis of a standard and permanent employment contract – does not per se protect them from the risk of falling below the IWP threshold. The operation of the legal presumption of employment status enshrined in Articles 3 and 4 of the proposed directive, therefore, seems not sufficient and leaves platform workers' vulnerability largely unaddressed.

Closely related, as part of the package of proposals to improve the working conditions of platform workers, one last initiative concerns the right to collective bargaining for the self-employed.

[70]Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union (COM(2020) 682 final).

[71]European Parliament, Legislative Resolution on the proposal for a directive of the European Parliament and of the Council adequate minimum wages in the European Union (2020/0310(COD)).

[72]European Parliament – Committee on Employment and Social Affairs (15.6.2022), Provisional agreement resulting from interinstitutional negotiations on the Proposal for a directive of the European Parliament and the Council (COM(2020)0682 – C9-0337/2020 – (2020)0310(COD)).

[73]Salverda (n 26).

[74]B Cantillon, Z Parolin and D Colleado, 'A Glass Ceiling on Poverty Reduction? An Empirical Investigation into the Structural Constraints on Minimum Income Protections' 30 (2020) Journal of European Social Policy 129–43.

[75]Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work (COM(2021) 762 final).

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The issue was tackled in December 2021 by a Commission proposal of non-binding Guidelines addressed to competition authorities at Member State level, finally adopted in the Commission's Communication C-374/2 of 30 September 2022.[76] The guidelines on the application of EU competition law to collective agreements affecting the working conditions of solo self-employed persons depart from the idea that self-employed persons who are in a situation comparable to that of workers cannot bargain collectively. Even when they are not reclassified, ie, they are genuine self-employed, still they can profit from access to collective bargaining, which may allow them to improve their working conditions.[77] The guidelines clarify what categories of collective agreements fall outside the scope of competition law (Article 101 TFEU) and announce that the Commission will not intervene against other categories of collective agreements.[78] The overall objective is to introduce legal certainty and protect certain groups of solo self-employed, particularly those engaged in the online platform economy, by offering them the possibility to organise and bargain collectively. In principle, collective agreements by solo self-employed persons comparable to workers would fall outside the scope of Article 101 TFUE when they affect or involve: (a) economically dependent solo self-employed; (b) solo self-employed persons working 'side by side' with workers; (c) solo self-employed persons working through digital labour platforms. While the draft guidelines are still in the form of a Commission proposal, they seem not to address some rather technical problems of classification and boundaries between different categories of self-employed.[79] Nonetheless, they constitute a step ahead in tackling some of the problems detected among the most vulnerable groups in the labour market: solo self-employed (VUP Group 2) and platform workers (VUP Group 4).

6. Conclusion: the challenge of reducing IWP and thus realising the full potential of the EPSR

This paper has explored some of the main regulatory challenges which have emerged in EU law over the last decade, which are now more visibly adopting an IWP perspective. The role of EU law so far has been, at the very least, ambiguous. Without doubt, it has not been able to adequately protect some groups of particularly vulnerable workers from risks such as that of IWP.

The most recent regulatory proposals seem to head in a more promising direction, by supporting coverage of extended collective agreements, and promoting adequate minimum wages, by facilitating platform workers in the reclassification of their work relationship, and by supporting collective bargaining for economically dependent self-employed. Yet, EU law still lags behind while unfolding the full potential of the protection for atypical workers and addressing the challenges deriving from the casualisation of work, including the issue of a widespread low work intensity.

Certainly, such protection cannot come only from an EU law intervention in the social sphere. As explained above, IWP is a complex phenomenon that demands a holistic approach if the EU wants to establish a legal framework aimed to realise the promise contained in Principle 6(2) EPSR – for which 'in-work poverty must be prevented'. This would entail, at the very minimum, a coordinated action in the regulation of labour law, social security and welfare institutions,

[76] European Commission, (2022/C 374/02) (2021), 30 September 2022, Communication from the Commission Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons.

[77] See paragraph 8 of the introduction in C(2022) 374/02.

[78] Although is not specified, if read in the light of case *FNV Kunsten* and the explanations of what types of collective agreements are not exempted from the application of Art 101 TFEU, it seems logical to understand that the Commission will not intervene when collective agreements involving solo-self-employed are at stake.

[79] E Brameshuber, '(A Fundamental Right to) Collective Bargaining for Economically Dependent, Employee-Like Workers' in JM Miranda Boto, E Brameshuber (eds), *Collective Bargaining and the Gig Economy. A Traditional Tool for New Business Models* (Hart 2022), 245–9.

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stimulating Member States to implement not only hard law measures such as the EU Directives mentioned above, but also the various soft law measures (eg, Recommendations) and other social policy instruments aimed at facilitating upward social convergence as committed by Article 3(3) TEU, and Articles 9, 147 and 151(1) TFEU.

The bird's eye view on EU law and IWP sketched in Sections 4 and 5 would also suggest calling for a more ambitious change of paradigm that, departing from the recent obsession with flexibility and competitiveness, would project EU law and policy towards a more protective framework, ideally for all workers including the most vulnerable ones.

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